PD-0287-19
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
Transmitted 3/25/2019 2:34 PM
Accepted 3/27/2019 12:27 PM
DEANA WILLIAMSON
CLERK

No._____

FILED
COURT OF CRIMINAL APPEALS
3/27/2019
DEANA WILLIAMSON, CLERK

TO THE COURT OF CRIMINAL APPEALS

OF THE STATE OF TEXAS

THE STATE OF TEXAS, Appellant

v.

CESAR RAMIRO ARELLANO, Appellee

Appeal from Victoria County

* * * * *

STATE'S PETITION FOR DISCRETIONARY REVIEW

* * * * *

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NAMES OF ALL PARTIES TO THE TRIAL COURT'S JUDGMENT

*The parties to the trial court's judgment are the State of Texas and Appellee, Cesar Ramiro Arellano.

*The case was tried before the Honorable Daniel F. Gilliam, Presiding Judge, County Court at Law 2, Victoria County, Texas.

*Counsel for Appellee at trial and on appeal was Constance Filley Johnson, Filley Law Firm, 214 S. Main, Victoria, Texas 77901. She is now the District Attorney of Victoria County; her office is recused. **Appellee is unrepresented.**

*Counsel for the State at trial was Alton James, III, Victoria County Assistant Criminal District Attorney, 205 North Bridge Street, Suite 301, Victoria, Texas 77901.

*Counsel for the State in the court of appeals was Brendan Wyatt Guy, Victoria County Assistant Criminal District Attorney, 205 North Bridge Street, Suite 301, Victoria, Texas 77901. He is no longer with that office.

*Timothy R. Poynter, Assistant District Attorney for DeWitt, Goliad, and Refugio Counties, 307 N. Gonzales, Cuero, TX 77954, was appointed to represent the State in this matter.

*Counsel for the State before this Court is John R. Messinger, Assistant State Prosecuting Attorney, P.O. Box 13046, Austin, Texas 78711.

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No._____

TO THE COURT OF CRIMINAL APPEALS

OF THE STATE OF TEXAS

THE STATE OF TEXAS, Appellant

v.

CESAR RAMIRO ARELLANO, Appellee

* * * * *

STATE'S PETITION FOR DISCRETIONARY REVIEW

* * * * *

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Motions to suppress that raise a simple issue should have simple resolutions. In this case, deciding whether the good-faith exception applies when there is a technical defect with the warrant is easy. Deciding who has the burden to show the absence of probable cause or a neutral magistrate, and what to do next, less so.

STATEMENT REGARDING ORAL ARGUMENT

The State requests oral argument. This case is primarily about the core function of Article 38.23(b) of the Texas Code of Criminal Procedure, including its applicability and burdens. But it is also about a trial court's obligation to fairly consider the evidence presented by the parties. Conversation will help the Court

decide these issues in a way that best serves motion practice in criminal cases.

STATEMENT OF THE CASE

Appellee was charged with driving while intoxicated. The trial court suppressed the blood evidence because the magistrate's name was not printed or typed below his signature on the warrant. The court of appeals affirmed, holding that TEX. CODE CRIM. PROC. art. 38.23(b) does not apply and, alternatively, the trial court had the discretion to ignore outright the State's evidence regarding the exception.

STATEMENT OF PROCEDURAL HISTORY

The court of appeals reversed in a published opinion.[1] The State's petition is due on March 25, 2019.

GROUNDS FOR REVIEW

1. **Does Texas Code of Criminal Procedure Article 38.23(b), the "good faith" exception, apply to warrants that do not have the magistrate's name printed or typed under his signature?**

2. **In a motion to suppress evidence obtained with a warrant, does the defendant bear the burden of negating the "good faith" exception?**

3. **Does Texas Code of Criminal Procedure Article 28.01, § 1(6), governing hearings on motions to suppress, allow a trial court to ignore a mode of evidence it made necessary?**

4. **The court of appeals should abate and remand to the trial court for findings and conclusions requested by the State.**

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[1] *State v. Arellano*, __S.W.3d__, No. 13-17-00268-CR, 2019 WL 758870 (Tex. App.–Corpus Christi Feb. 21, 2019).

ARGUMENT AND AUTHORITIES

Appellee was arrested for driving while intoxicated. Officer Phillip Garcia obtained a search warrant for his blood. Appellee's motion to suppress alleged one issue: "the warrant herein is facially invalid because it fails to meet the statutory requirements of Article 18.04 of the Texas Code of Criminal Procedure."[2] Article 18.04 lists five requisites:

> (1) that it run in the name of "The State of Texas";
> (2) that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place, or thing to be searched;
> (3) that it command any peace officer of the proper county to search forthwith the person, place, or thing named;
> (4) that it be dated and signed by the magistrate; and
> (5) that the magistrate's name appear in clearly legible handwriting or in typewritten form with the magistrate's signature.[3]

Appellee narrowed his argument at the hearing: the warrant was "facially invalid" because the magistrate's signature did not "appear in clearly legible handwriting or in typewritten form with the magistrate's signature."[4] He rested after his exhibit, which includes the affidavit and warrant, was admitted.[5] The State then rested.[6]

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[2] 1 CR 37.

[3] TEX. CODE CRIM. PROC. art. 18.04. All references to "articles" are to the Code of Criminal Procedure unless otherwise stated.

[4] 1 RR 10-13, 20. He also explained Article 18.04(5)'s addition in 2015. *See* Acts 2015, 84th R.S.,ch. 690, § 1, General and Special Laws of Texas.

[5] 1 RR 7-8; Def. Ex. 1.

[6] 1 RR 8.

The State argued that Article 38.23(b), the exclusionary exception for good-faith reliance on a warrant, excuses the signature-block problem in this case.[7] Appellee objected to argument based on Article 38.23(b) without Officer Garcia testifying; "whether or not there was some good faith reliance is premature in his absence."[8] The State countered that Defense Exhibit 1 included the affidavit showing Officer Garcia had probable cause and there was no evidence that he acted in bad faith or that the magistrate was not neutral.[9] Appellee conceded that probable cause is "not the issue here" and insisted that good-faith cannot be based on a warrant that fails Article 18.04's requirements.[10] The trial court requested briefing on that issue, to include "any relevant case law, anything else that you want to submit with regard to cases or argument with regard to that[,]" and then ended that discussion.[11]

Appellee's trial brief reiterated the argument that good-faith reliance was impossible because of the missing signature block.[12] The State's brief included an affidavit from Officer Garcia and his offense report, both of which say District Court

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[7] 1 RR 13-16. *See* TEX. CODE CRIM. PROC. art. 38.23(b) ("It is an exception to the provisions of Subsection (a) of this Article that the evidence was obtained by a law enforcement officer acting in objective good faith reliance upon a warrant issued by a neutral magistrate based on probable cause.").

[8] 1 RR 16.

[9] 1 RR 20-21.

[10] 1 RR 21.

[11] 1 RR 26. The trial court went on to consider other pretrial motions.

[12] 1 CR 43-46.

Judge Williams signed the warrant.[13] The trial court granted appellee's motion to suppress.[14] The State requested "essential findings," including whether the trial court believed Officer Garcia and whether Judge Williams was a neutral magistrate who issued a warrant based on probable cause.[15]

The trial court adopted appellee's proposed findings and conclusions with one addition—that the State offered no evidence at the hearing on the issue of the magistrate's identity.[16] The trial court gave alternative legal bases for its ruling. First, the good-faith exception does not apply because the warrant was facially invalid.[17] Second, there was no evidence that Officer Garcia relied on the warrant in good faith because, even had the trial court opted to consider Garcia's post-hearing affidavit, it "[merely] provide[d] a recitation of the statutory requirements for the 'good faith exception' with respect to a warrant."[18]

The court of appeals affirmed. It held:

1. The warrant was facially invalid.[19]
2. The good-faith exception does not apply to facially invalid

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[13] 1 CR 79, 89.

[14] 1 CR 42.

[15] 1 CR 96-97.

[16] 1 CR 113 (Findings h, i). The trial court's findings and conclusions are appended.

[17] 1 CR 113-14 (Conclusions e, l).

[18] 1 CR 114-15 (Conclusions g-k).

[19] Slip op. at 6.

warrants.[20]

3. It was thus unnecessary to consider Officer Garcia's post-hearing affidavit, which the trial court had discretion to ignore.[21]

As a result, the court of appeals declined to consider the argument that the trial court's findings were inadequate (and its ruling suspect) due to its failure to consider the affidavit.[22] It also failed to mention the State's argument that the trial court's conclusion about Officer Garcia's affidavit was not supported by the record.[23]

May an officer rely in good faith on a warrant that's missing a signature block?

The court of appeals held that Article 38.23(b) bars reliance on a warrant that is not "facially valid," which includes the absence of a signature block below the magistrate's signature. The court offered three sources for its holding: the language of the statute, *State v. Molden*, and *McClintock v. State*.[24] None explain why the Texas good-faith exception does not apply as a matter of law.

Article 38.23(b) does not require—or mention—a "facially valid" warrant. All it requires is "a warrant issued by a neutral magistrate based on probable cause."[25]

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[20] Slip op. at 7.

[21] *Id*.

[22] *Id*. at 7 n.4; *see* State's Br. at 17-23, 31-37.

[23] State's Br. at 35.

[24] Slip op. at 6-7. *See McClintock v. State*, 541 S.W.3d 63 (Tex. Crim. App. 2017), *reh'g denied*, 538 S.W.3d 542 (Tex. Crim. App. 2017); *State v. Molden*, 484 S.W.3d 602, 609 (Tex. App.–Austin 2016, pet. ref'd).

[25] TEX. CODE CRIM. PROC. art. 38.23(b).

Molden is inapplicable because it rejected the application of Article 38.23(b) to a *warrantless* blood draw.[26] *McClintock* does say that an officer acts in objective good faith reliance upon the warrant "as long as the warrant is facially valid."[27] In context, however, that statement meant only that good faith is found when the information contained in the supporting affidavit reasonably appears on its face to satisfy the probable cause standard.[28] *McClintock* focused on the substance of the affidavit, not the attendant technical requirements of the warrant. In other words, it matched the plain language of Article 38.23(b). The court of appeals's holding does not.

The lower court's holding also conflicts with the history of the exception and its treatment by this Court. Article 38.23(b) was a response to *U.S. v. Leon*, which held that "the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion."[29] This rule has few exceptions, including for warrants that are "facially deficient."[30] But *Leon* explained what this means: "In the absence of an allegation that the magistrate abandoned his

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[26] *Molden*, 484 S.W.3d at 610 ("It is undisputed that no such warrant existed in this case; thus, article 38.23's explicit good faith exception is inapplicable to this case.").

[27] *McClintock*, 541 S.W.3d at 73 (internal quotations omitted).

[28] *Id*. at 72-74.

[29] 468 U.S. 897, 922 (1984).

[30] *Id*. at 923.

detached and neutral role, suppression is appropriate only if the officers were dishonest or reckless in preparing their affidavit or could not have harbored an objectively reasonable belief in the existence of probable cause."[31]

Although Article 38.23(b), unlike the Supreme Court, requires probable cause,[32] it has never been interpreted to foreclose application due to a hyper-technicality like a missing signature block. This Court has said the opposite. In *Dunn v. State*, for example, this Court rejected the argument that fruits of an arrest must be suppressed because the arrest warrant, though based on probable cause, was not signed by the magistrate as required by statute.[33] "This appears to be exactly the type of situation intended to be covered by article 38.23(b)."[34] Despite the (important) technical defect, the warrant "had *issued* for purposes of the good faith exception of article 38.23(b)."[35]

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[31] *Id.* at 926.

[32] *Compare McClintock*, 541 S.W.3d at 68, *with Leon*, 468 U.S. at 925-26 (absence of probable cause in the affidavit did not invalidate the search based on the warrant).

[33] *Dunn v. State*, 951 S.W.2d 478, 479 (Tex. Crim. App. 1997). *See* TEX. CODE CRIM. PROC. art. 15.02(3).

[34] *Dunn*, 951 S.W.2d at 479.

[35] *Id*. (emphasis in original). *Cole v. State*, 200 S.W.3d 762, 765-66 (Tex. App.–Texarkana 2006, no pet.), applied this to search warrants. Last week, the Second Court held the same, based on a case that cites *Dunn*. *Wheeler v. State*, __S.W.3d__, No. 02-18-00197-CR, 2019 WL 1285328, at *6 n.8 (March 21, 2019) (citing *White v. State*, 989 S.W.2d 108, 110 (Tex. App.–San Antonio 1999, no pet.).

The lower court's interpretation renders Article 38.23(b) a nullity. If an officer cannot rely on a warrant with substantive defects (lack of neutral magistrate or probable cause) or purely technical defects (lack of signature block), what is Article 38.23(b) good for?

If Article 38.23(b) applies, who has the burden?

This Court held almost 50 years ago that a defendant, as the movant in a motion to suppress, bears the burden of production and proof that evidence was obtained illegally.[36] If a defendant can show the absence of a warrant, there is no *prima facie* evidence of proper police conduct and the burden shifts to the State to prove the lawfulness of the officer's conduct.[37] This is often reduced to the rule that the State has no burden until the defendant proves a warrantless search occurred.[38]

But it is not exactly so. *Russell v. State*, the case most cited for this rule, also says that once evidence of a warrant is produced "the burden of proof is shifted back to the defendant to show the invalidity of the warrant."[39] The question is whether an Article 18.04(5) defect is the sort of "invalidity" that satisfies the movant's burden

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[36] *Mattei v. State*, 455 S.W.2d 761, 766 (Tex. Crim. App. 1970) (citation omitted).

[37] *Id*.

[38] *State v. Garcia*, __S.W.3d__, PD-0344-17, 2018 WL 6521579, at *4 (Tex. Crim. App. Dec. 12, 2018), reh'g denied (Mar. 6, 2019); *Abney v. State*, 394 S.W.3d 542, 547 (Tex. Crim. App. 2013); *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005).

[39] *Russell v. State*, 717 S.W.2d 7, 9-10 (Tex. Crim. App. 1986), disapproved of on other grounds by *Handy v. State*, 189 S.W.3d 296, 299 n.2 (Tex. Crim. App. 2006).

under *Russell*, requiring the State to prove good-faith reliance.

Almost certainly not. The movant should have to prove that reliance on the warrant was unjustified. *Mattei v. State*, cited in *Russell*, adopted the rule that the defendant bears the burden of establishing the search's illegality once "the issuance of a warrant [i]s effectively established."[40] As shown above, the warrant "issued" in this case.[41] As argued above, a challenge to its validity should require more than identifying a technical defect; it should mean challenging the neutrality of the magistrate or the presence of probable cause.[42] In effect, a defendant should have to show there was no warrant contemplated by Article 38.23(b).[43]

In this case, appellee based his motion on the absence of a signature block and then, at the hearing, on the inapplicability of Article 38.23(b). But he never attempted to show the magistrate was not neutral and detached,[44] and conceded that probable cause was not an issue. If a warrant issued for the purposes of Article 38.23(b), appellee failed to rebut the presumption of proper police conduct and the State never had any burden. The State should have prevailed in the trial court or on appeal.

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[40] 455 S.W.2d at 765 (citation omitted).

[41] *See Dunn*, 951 S.W.2d at 479.

[42] *Leon*, 468 U.S. at 926.

[43] *But see id.* at 924 (suggesting "the prosecution should ordinarily be able to establish objective good faith without a substantial expenditure of judicial time.").

[44] *See Flores v. State*, 367 S.W.3d 697, 703 (Tex. App.–Houston [14th Dist.] 2012, pet. ref'd) (presuming magistrate was neutral in the absence of contrary evidence).

May a trial court cut a hearing short and then ignore "paper" evidence?

If the burden to prove good-faith reliance shifted to the State, the court of appeals was wrong to hold that the State's "paper" evidence could be ignored pursuant to the trial court's broad discretion under Article 28.01, § 1(6), as interpreted by *Ford v. State*.[45]

Article 28.01, § 1(6), permits a trial court to decide a motion to suppress "on the motions themselves, or upon opposing affidavits, or upon oral testimony, subject to the discretion of the court."[46] This Court said in *Ford* that this means "[a] trial judge may use his discretion in deciding what type of information he considers appropriate and reliable in making his pre-trial ruling."[47] The statute does not require the trial court to do anything specific; "[i]t is merely an indication that such hearings are informal and need not be full-blown adversary hearings conducted in accord with the rules of evidence."[48]

The policy arguments for informality have merit, but at some point a lack of formality becomes a lack of fairness. In this case, that happened when the trial court

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[45] 305 S.W.3d 530 (Tex. Crim. App. 2009). This ground is relevant to the extent the court of appeals has yet to address whether the trial court's contingent finding on the content of Officer Garcia's affidavit was supported by the record.

[46] TEX. CODE CRIM. PROC. art. 28.01, § 1(6).

[47] 305 S.W.3d at 539; *see id*. ("the trial judge, in his discretion, may use different types of information, conveyed in different ways, to resolve the contested factual or legal issues.")

[48] *Id*. at 540.

cut the hearing short to request briefing on the legal applicability of Article 38.23(b) and then knocked the State for failing to offer live testimony of its factual applicability. The State briefed the issue of facial validity and included an alternative argument on good faith, presumably out of an abundance of caution.[49] Based on its conclusions of law, the trial court plainly did not agree the State had no burden at that point in the proceedings. But if the trial court intended to pour the State out on lack of evidence at the hearing, that fact was already known and the requested briefing was academic. There is no reason to terminate a hearing to focus exclusively on a threshold legal issue and then punish a party for not having introduced evidence on subsidiary issues at that hearing .

No party should have its evidence arbitrarily ignored. The trial court's (and court of appeals's) explicit reliance on Article 28.01, § 1(6), as interpreted in *Ford*, should be disavowed.

The trial court should have made the findings requested by the State.

If this Court ultimately agrees with the above arguments, the court of appeals will have to address the State's arguments about the trial court's interpretation of Officer Garcia's affidavit.[50] It will also have to remand for additional findings. The

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[49] *Compare State v. Ross*, 32 S.W.3d 853, 855-56 (Tex. Crim. App. 2000) (suppression decisions will be upheld on any applicable theory of law), *with State v. Esparza*, 413 S.W.3d 81, 90 (Tex. Crim. App. 2013) (application of this rule is "manifestly unjust" if appellant "was never fairly called upon to adduce" predicate facts necessary to new theory).

[50] TEX. R. APP. P. 47.1.

question is, which ones?

In *State v. Cullen*, this Court held that a trial court that is asked (or endeavors) to issue findings of fact and conclusions of law must make them "adequate to provide a reviewing court with a basis upon which to review [its] application of the law to the facts."[51] The problem is that these "essential findings," as they are called,[52] are in the eye of the beholder; courts of appeals sometimes affirm on grounds never pled or ruled upon. Worse, appellate courts sometimes describe the missing facts and their importance before remanding to the trial court, a practice four members of this Court call "micro-manage[ment]."[53]

Reviewing courts should not give lower courts a roadmap to specific outcomes, and parties should bear some responsibility for their cases on appeal. The aforementioned plurality proposed treating inadequate findings like this Court does a total lack of findings—by assuming findings that support the ruling—unless there was some objection to their inadequacy in the trial court.[54] A request for specific findings should save the losing party from the so-called *Ross* presumption, too.

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[51] 195 S.W.3d 696, 699 (Tex. Crim. App. 2006).

[52] *Id*.

[53] *State v. Martinez*, __S.W.3d__, PD-0324-17, 2019 WL 137754 (Tex. Crim. App. Jan. 9, 2019) (Newell, J., concurring, joined by Keller, P.J., Hervey and Richardson, JJ.) (pagination not complete) ("It is equally clear that our precedent requiring a remand for 'necessary' findings provides an incentive for reviewing courts to micro-manage trial courts rather than defer to their findings.").

[54] *Id*.; *see Ross*, 32 S.W.3d at 855 (assuming any findings supported by the record).

In this case, the State requested "essential findings," citing *Cullen*, and requested findings and conclusions on five specific questions.[55] The trial court did not answer all of them due to its erroneous legal determinations. It should be made to do so before the court of appeals does anything further.

Conclusion

Appellee never challenged the identity of the magistrate who signed the warrant, his neutrality, or the presentment of probable cause. His objection was purely technical—the absence of a warrant formality that Texas survived without until 2015. The trial court was wrong to hold that Article 38.23(b) does not apply at all. And because a warrant issued for the purposes of Article 38.23(b), the presumption of proper police conduct held and the burden to prove it never shifted to the State. Regardless, the breadth of the trial court's alternative rulings is too speculative to warrant further appellate consideration without the findings and conclusions requested by the State.

[55] 1 CR 96-97.

PRAYER FOR RELIEF

WHEREFORE, the State of Texas prays that the Court of Criminal Appeals grant this Petition for Discretionary Review and reverse the judgment of the court of appeals and either resolve this interlocutory appeal in the State's favor or direct the court of appeals to abate and remand to the trial court for the fact-finding requested by the State.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that according to the WordPerfect word count tool the applicable portion of this document contains 4,384 words.

/s/ John R. Messinger
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CERTIFICATE OF SERVICE

The undersigned certifies that on this 25th day of March, 2019, the State's Petition for Discretionary Review was served electronically or by mail on the parties below:

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APPENDIX

NUMBER 13-17-00268-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

THE STATE OF TEXAS, **Appellant,**

v.

CESAR RAMIRO ARELLANO, **Appellee.**

On appeal from the County Court at Law No. 2
of Victoria County, Texas.

OPINION

Before Justices Benavides, Longoria, and Hinojosa
Opinion by Justice Longoria

Appellant the State of Texas charged appellee Cesar Ramiro Arellano with a driving while intoxicated Class A Misdemeanor because he had previously been convicted of the same offense. *See* TEX. PENAL CODE ANN. § 49.09(a) (West, Westlaw through 2017 1st C.S.). Arellano filed a motion to suppress. After the trial court conducted a hearing on the matter, it granted Arellano's motion. By four issues, which

we have reorganized, the State contends the trial court erred in: (1) concluding the warrant was "facially invalid"; (2) concluding the State was barred from invoking the good faith exception; (3) refusing to consider documentary evidence presented by the State; and (4) failing to provide adequate findings of fact and conclusions of law.[1] We affirm.

I. BACKGROUND

Arellano was arrested for the offense of driving while intoxicated. *See id*. § 49.04 (West, Westlaw through 2017 1st C.S.). Officer Phillip Garcia of the Victoria Police Department obtained a specimen of Arellano's blood after applying for a search warrant. Arellano filed a motion to suppress, alleging that the warrant was facially invalid because it failed to meet the statutory requirements of Article 18.04 of the Texas Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. ANN. art. 18.04 (West, Westlaw through 2017 1st C.S.). At the motion to suppress hearing, Arellano offered an eleven-page document entitled "Affidavit for Search Warrant" into evidence without objection. The State responded to Arellano's argument by invoking the good faith exception contained within Article 38.23(b) of the Texas Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. ANN. art. 38.23 (West, Westlaw through 2017 1st C.S.).

The trial court expressed concern about whose signature was on the warrant. The State indicated a willingness to resolve that issue and offered to call in a witness. Instead, the trial court instructed both parties to submit a brief summarizing their arguments. The State submitted several documentary exhibits attached to their brief including a separate affidavit from Officer Garcia where he attested to the identity of the magistrate and the

[1] After filing Arellano's brief, on January 28, 2019, Arellano's counsel filed her motion to withdraw, stating that she was sworn in as the Criminal District Attorney of Victoria County, Texas, and is thereby disqualified from representing Arellano in this matter. After considering her motion, we hereby GRANT counsel's motion to withdraw.

offense report.[2] Thereafter, the trial court granted Arellano's motion to suppress. In response to the State's request, the trial court made the following findings of fact and conclusions of law to support its ruling:

I. Findings of Fact

. . . .

g. The Trial Court reviewed [Arellano's] Exhibit 1 and found that the signature above the line indicating 'Magistrate, Victoria County' was not in legible handwriting, nor was it accompanied by any name identifying the magistrate in either clearly legible handwriting or in typewritten form.

h. During the hearing, neither the Trial Court nor the State could identify the magistrate by the signature on the warrant in this matter. The State offered no evidence on this issue.

i. During the hearing, the State called no witnesses. More specifically, the State did not elicit any testimony from Officer Garcia during the hearing . . .

II. Conclusions of Law

. . . .

d. The Court finds that the signature on the search warrant seeking Defendant's blood is not legible and is not accompanied by the magistrate's name in either clearly legible handwriting or in typewritten form.

e. The warrant in this case obtained by Officer Garcia is not facially valid because it fails to comply with the requisites of Tex. Code of Crim. Proc. 18.04.

f. In order to rely on the "good faith exception" to the exclusionary rule codified in Tex. Code of Crim. Proc. 38.23(b), an officer must rely on a facially valid warrant. *see* [sic] *Miller v. State*, 703 S.W.3d 352 (Tex. App.—Corpus Christi, 1985); *McClintock v. State*, 2017 WL 1076289 (Tex. Crim. App., March 22, 2017).

. . .

[2] This affidavit is separate from the probable cause affidavit attached to the search warrant.

h. Officer Garcia did not testify during the hearing, and thus presented no evidence to show whether he relied in "good faith" upon the warrant in this case.

i. Although Officer Garcia did not testify at the hearing, the State attached Officer Garcia's affidavit to their brief to the Court.

j. Even if the Trial Court wished to consider the affidavit, as within its discretion, the statements in the affidavits provide a recitation of the statutory requirements for the "good faith exception" with respect to a warrant.

This appeal followed.

II. MOTION TO SUPPRESS

A. Standard of Review

A trial court's ruling on a motion to suppress, like any ruling on the admission of evidence, is subject to review for abuse of discretion. *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006). "We view the record in the light most favorable to the trial court's conclusion and reverse the judgment only if it is outside the zone of reasonable disagreement." *Id*. Its ruling will be upheld if it is reasonably supported by the record and is correct under any theory of law applicable to the case. *Ramos v. State*, 245 S.W.3d 410, 417–18 (Tex. Crim. App. 2008). We give almost total deference to a trial court's express or implied determination of historical facts and review de novo the court's application of the law of search and seizure to those facts. *State v. Ross*, 32 S.W.3d 853, 856 (Tex. Crim. App. 2000)

B. Warrant Requirements

By its first issue, the State argues that the trial court erroneously concluded that the warrant was facially invalid in violation of Article 18.04(5) of the Texas Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. ANN. art. 18.04.

1. Applicable Law

In September 2015, the Legislature amended Article 18.04 of the Texas Code of Criminal Procedure by adding a fifth element to the list of requisites for a valid search warrant. This additional requirement requires the warrant to contain the name of the issuing magistrate in clearly legible handwriting or in typewritten form along with the magistrate's signature. HOUSE COMM. ON CRIMINAL JURISPRUDENCE, Bill Analysis, Tex. H.B. 644, 84th Leg. R.S. (2015).[3]

A search warrant shall be sufficient under article 18.04 of the code of criminal procedure if it contains the following requisites:

1. that it run in the name of "The State of Texas";

2. that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place, or thing to be searched;

3. that it command any peace officer of the proper county to search forthwith the person, place, or thing named;

4. that it be dated and signed by the magistrate; and

5. *that the magistrate's name appear in clearly legible handwriting or in typewritten form with the magistrate's signature*

TEX. CODE CRIM. PROC. ANN. art. 18.04 (emphasis added). A search warrant must be "clearly sufficiently specific to meet the mandates of the Fourth Amendment, the Texas Constitution, and article 18.04 of the Code." *Ramirez v. State*, 345 S.W.3d 631, Tex. App.—San Antonio 2011, no pet.); *Miller v. State*, 703 S.W.2d 352, 353 (Tex. App.—Corpus Christi 1985, pet. ref'd) (holding that a search warrant lacking any of the required elements of article 18.04 is facially invalid). However, "[a] warrant that does not contain

[3] The amendment "would add to existing search warrant requirements that the name of the magistrate issuing the warrant appear in clearly legible handwriting or in typewritten form on the warrant" because "[a] magistrate's signature on such warrants may not always be clearly legible, which can increase the risk of forgery or inadequately informing individuals of who has authorized the search warrant." HOUSE COMM. ON CRIMINAL JURISPRUDENCE, Bill Analysis, Tex. H.B. 644, 84th Leg. R.S. (2015).

the basic information required by art. 18.04 can nevertheless be valid so long as the warrant incorporates by reference [an] affidavit *and* said affidavit does contain all of the information required by art. 18.04." *Turner v. State*, 886 S.W.2d 859, 864 (Tex. App.—Beaumont 1994, pet ref'd).

2. Discussion

Here, the search warrant was signed by a magistrate; however, the magistrate's name does not appear in clearly legible handwriting or in typewritten form with the magistrate's signature as required by article 18.04(5). *See* TEX. CODE CRIM. PROC. ANN. art. 18.04(5). Moreover, the attached affidavit incorporated in the warrant also lacks the magistrate's name in clearly legible handwriting or typewritten form. Because article 18.04(5) requires that the "magistrate's name appear in clearly legible handwriting or in typewritten form with the magistrate's signature," and the search warrant before us does not meet this requirement, we conclude the warrant does not comply with the requirements of 18.04 and is therefore facially invalid. *See Turner,* 886 S.W.2d at 864; *Miller*, 703 S.W.2d at 353. Accordingly, we overrule the State's first issue.

C. Good Faith Exception

By its second issue, the State claims that the trial court erred by concluding the State was prevented from invoking the good faith exception of article 38.28 of the code of criminal procedure. *See* TEX. CODE CRIM. PROC. ANN. art. 38.23.

The Texas good faith statutory exception provides an exception to the exclusion of unlawfully obtained evidence only if the law enforcement officer was acting in good faith reliance upon a warrant. *State v. Molden*, 484 S.W.3d 602, 610 (Tex. App.—Austin 2016, pet ref'd). In executing a warrant, that officer "act[s] in objective good faith reliance upon" the warrant, "as long as the warrant is facially valid." *McClintock v. State*, 541

S.W.3d 63, 73 (Tex. Crim. App. 2017). In this case, Arellano's blood was obtained as a result of a facially invalid warrant in violation of article 18.04 of the code of criminal procedure. *See Molden*, 484 S.W.3d at 610. Because the "good faith exception" requires a facially valid warrant, and here, by contrast, no valid search warrant existed, the "good faith exception" is inapplicable to this case. *See id.*; TEX. CODE CRIM. PROC. ANN. art. 38.23. Accordingly, we conclude that the trial court did not err in applying the exclusionary rule in this case. We overrule the State's second point of error.

D. State's Documentary Evidence

By its third issue, the State contends that it was plain error for the trial court to fail to consider "any of the documentary evidence offered by the State" following the motion to suppress hearing. According to the State, "if [Arellano] is allowed to submit documentary evidence then the State must be allowed to do so as well."

Here, the trial court made it clear that it did not consider the State's documentary evidence when it concluded that the warrant was facially invalid. However, because the warrant was facially invalid, it was unnecessary for the trial court to consider any of the State's evidence. *See* TEX. CODE CRIM. PROC. ANN. art. 18.04(5). Nonetheless, "a trial judge may use its discretion in deciding what type of information he considers appropriate and reliable in making his pre-trial ruling." *Ford v. State*, 305 S.W.3d 530, 539 (Tex. Crim. App. 2009). Accordingly, we cannot say that the trial court abused its discretion when it rejected the State's documentary evidence. *Id*. We therefore overrule the State's third issue.[4]

[4] Additionally, in its fourth issue, the State complains that the trial court's findings of fact and conclusions of law are "wholly inadequate on the potentially dispositive issue in this case" as the trial court failed to address: (1) whether it believed Officer Garcia's testimony through his affidavit; (2) the offense report; (3) whether it believed the magistrate was a neutral and detached magistrate, or (4) whether the warrant was issued on probable cause. Because we determined that the warrant was facially invalid, this issue is not dispositive. *See* TEX. R. APP. P. 47.4.

III. CONCLUSION

Having overruled the State's issues, we affirm the trial court's judgment.

NORA L. LONGORIA
Justice

Publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
21st day of February, 2019.

Filed 6/9/2017 2:19:43 PM
Heidi Easley
County Clerk
Victoria County, Texas
By: John Williams

NO. 2-107,304

STATE OF TEXAS	**§**	**IN THE COUNTY COURT**
	§	
vs.	**§**	**AT LAW NO. 2**
	§	
CESAR RAMIRO ARELLANO	**§**	**VICTORIA COUNTY, TEXAS**

~~PROPOSED~~ FINDING OF FACTS AND CONCLUSIONS OF LAW

I. FINDINGS OF FACT

a. Officer Philip Garcia, an officer with the Victoria Police Department, arrested Defendant on or about February 25, 2016, for suspicion of Driving While Intoxicated.

b. Officer Phillip Garcia sought a warrant to draw "human blood from the body of" Defendant. The warrant issued at 1:25 a.m. on February 26, 2016.

c. Defendant filed a Motion to Suppress seeking to suppress any evidence and testimony regarding the results of the Blood Alcohol Content analysis performed on the specimen obtained from Defendant.

d. The Trial Court held a hearing on Defendant's Motion to Suppress on or about May 16, 2017.

e. An eleven page document, including an Affidavit for Search Warrant and Search Warrant, was marked as Defendant's Exhibit 1 and introduced into evidence without objection.

f. During the hearing, the Trial Court was asked to take judicial notice of Tex. Code of Crim. Proc. art. 18.04 and did so as requested.

g. The Trial Court reviewed Defendant's Exhibit 1 and found that the signature above the line indicating "Magistrate, Victoria County" was not in legible handwriting, nor was it

accompanied by any name identifying the magistrate in either clearly legible handwriting or in typewritten form.

h. During the hearing, neither the Trial Court nor the State could identify the magistrate by the signature on the warrant in this matter.The State offered no evidence on this issue.

i. During the hearing, the State called no witnesses. More specifically, the State did not elicit any testimony from Officer Garcia during the hearing held on May 16, 2017.

II. CONCLUSIONS OF LAW

a. Defendant's motion challenges the facial validity of the warrant in this case seeking a specimen of human blood from Defendant.

b. Tex. Code of Crim. Proc. art 18.04 prescribes the requisites for a valid warrant. Tex. Code of Crim. Proc. art. 18.04 provides as follows:

Art. 18.04. CONTENTS OF WARRANT. A search warrant issued under this chapter shall be sufficient if it contains the following requisites:

(1) that it run in the name of "The State of Texas";

(2) that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place, or thing to be searched;

(3) that it command any peace officer of the proper county to search forthwith the person, place, or thing named;

(4) that it be dated and signed by the magistrate; and

(5) that the magistrate's name appear in clearly legible handwriting or in typewritten form with the magistrate's signature.

c. The plain language of Tex. Code of Crim. Proc. 18.04(5) requires that a magistrate's signature on a search warrant be accompanied by either the magistrate's name in clearly legible handwriting or in typewritten form.

d. The Trial Court finds that the signature on the search warrant seeking Defendant's blood is not legible, and is not accompanied by the magistrate's name in either clearly legible handwriting or in typewritten form.

e. The warrant in this case obtained by Officer Garcia is not facially valid because it fails to comply with the requisites of Tex. Code of Crim. Proc. 18.04.

f. In order to rely on the "good faith exception" to the exclusionary rule codified in Tex. Code of Crim. Pro. 38.23(b), an officer must rely on a facially valid warrant. *see Miller v. State*, 703 S.W.2d 352 (Tex.App.—Corpus Christi, 1985); *McClintock v. State*, 2017 WL 1076289 (Tex. Crim. App., March 22, 2017).

g. Tex. Code of Crim. Proc art. 28.01 allows that a trial court *may* conduct a suppression hearing based on motions, affidavits or testimony, but there is nothing in the statute to indicate that it *must.* It is merely an indication that such hearings are informal and need not be full-blown adversary hearings conducted in accord with the rules of evidence. *Ford v. State*, 305 S.W.3d 530, 540 (Tex. Crim. App. 2009).

h. Officer Garcia did not testify during the hearing, and thus presented no evidence to show whether he relied in "good faith" upon the warrant in this case.

i. Although Officer Garcia did not testify at the hearing, the State attached Officer Garcia's affidavit to their brief to the Court.

j. Even if the Trial Court wished to consider the affidavit, as within its discretion, the statements in the affidavit provide a recitation of the statutory requirements for the "good

faith exception" with respect to a warrant.

k. The Trial Court concludes that the evidence fails to show that Officer Garcia objectively relied in good faith on the warrant to obtain a blood specimen from Defendant in this case.

l. The Trial Court further finds that because there was not a facially valid warrant, the "good faith exception" does not apply.

Signed this 13th day of June, 2017.

Signed: 6/13/2017 03:01 PM

JUDGE PRESIDING

Filed June 13, 2017 3:53 p.m.
Heidi Easley
County Clerk
Victoria County, Texas
By: Wade, Becky